

224115

PHYSICAL DOCUMENT

LPS-n224115-v1

CWA CITIZEN SUIT COMPLAINT

Author: Woolner, Rhodora

Document Type: PLEADING

LSA(s):

Co-Counsel:

Counsel LSA(s):

Distribution List: Woolner, Rhodora (ENRD); Lattin, Sue (ENRD); Rose, Robert (ENRD);
Lu, Sarah (ENRD); Berman, Lisa (ENRD)

Fileroom: LPS - Main Justice

DJ#:

Case Name:

Court: CA N.D. Cal.; 9th Cir.

Notes: SCANNED/UNASSIGNED

Double-Sided:

Received Date: 11/27/2012

Urgent:

Oversize:

Bound Document:

1 Jack Silver, Esq. SB# 160575
2 Jerry Bernhaut, Esq. SB# 206264
3 Law Office of Jack Silver
4 Post Office Box 5469
5 Santa Rosa, CA 95402-5469
6 Tel. (707) 528-8175
7 Fax. (707) 528-8675
8 Email: lhm28843@sbcglobal.net

9 Attorneys for Plaintiff
10 NORTHERN CALIFORNIA RIVER WATCH

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 NORTHERN CALIFORNIA RIVER
14 WATCH, a non-profit Corporation,

15 Plaintiff,

16 v.

17 CITY OF YREKA and DOES 1 - 10,
18 Inclusive,

19 Defendants

CASE NO. 3:12-cv-05872 JSC

**CERTIFICATE OF SERVICE OF
COMPLAINT ON UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY AND UNITED STATES
DEPARTMENT OF JUSTICE**

2012 NOV 27 AM 11:12

1 CERTIFICATE OF SERVICE

2 I am employed in the County of Sonoma, State of California. I am over the age of
3 eighteen years and not a party to the within action. My business address is P.O. Box 14426,
4 Santa Rosa, CA 95402. On the date set forth below, I served the following described
5 document(s):

6 **COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF, CIVIL**
7 **PENALTIES, RESTITUTION AND REMEDIATION (Environmental - Clean**
8 **Water Act 33 U.S.C. § 1251 et seq)**

9 on the following parties by placing a true copy in a sealed envelope, addressed as follows:

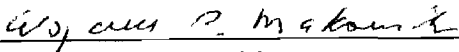
10 Citizen Suit Coordinator
11 U.S. Dept. of Justice
12 Environmental & Natural Resource Division
13 Law and Policy Section
14 P.O. Box 7415
15 Ben Franklin Station
16 Washington, DC 20044-7415

17 Administrator
18 U.S. Environmental Protection Agency
19 Ariel Rios Building
20 1200 Pennsylvania Avenue, N.W.
21 Washington, D.C. 20460

22 ☒ (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class
23 mail, for collection and mailing at Santa Rosa, California, following ordinary business practices.
24 I am readily familiar with the practices of Law Office of Jack Silver for processing of
25 correspondence; said practice being that in the ordinary course of business, correspondence is
26 deposited with the United States Postal Service the same day as it is placed for processing.

27 ☐ (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile
28 machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the
foregoing is true and correct, and that this declaration was executed on November 19, 2012 at
Santa Rosa, California.


Wojciech P. Makowski

ORIGINAL
FILED

NOV 15 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

1 Jack Silver, Esquire SB# 160575
Law Office of Jack Silver
2 Jerry Bernhaut, Esquire SB# 206264
Post Office Box 5469
3 Santa Rosa, California 95402-5469
Telephone: (707) 528-8175
4 Facsimile: (707) 528-8675
Email: lhm28843@sbcglobal.net

5 Attorney for Plaintiff
6 NORTHERN CALIFORNIA RIVER WATCH

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 NORTHERN CALIFORNIA RIVER
WATCH, a non-profit Corporation,

11 Plaintiff,

12 v.

13 CITY OF YREKA and DOES 1-10,
14 Inclusive,

15 Defendants.
16

CASE NO.: 5872
12

**COMPLAINT FOR INJUNCTIVE
RELIEF, DECLARATORY RELIEF
CIVIL PENALTIES, RESTITUTION
AND REMEDIATION**

[Environmental - Clean Water Act 33 U.S.C.
§ 1251, *et seq.*]

17 NOW COMES Plaintiff NORTHERN CALIFORNIA RIVER WATCH , a non-profit
18 corporation, ("RIVER WATCH") by and through its attorneys, and for its Complaint against
19 Defendant CITY OF YREKA, ("CITY") states as follows:

20 **I. NATURE OF THE CASE**

21 1. This is a citizen's suit for relief brought by RIVER WATCH under the Federal
22 Water Pollution Control Act, also known as the Clean Water Act ("CWA"), 33 U.S.C. § 1251
23 *et seq.*, specifically Section 505, 33 U.S.C. § 1365, 33 U.S.C. § 1311, and 33 U.S.C. § 1342, to
24 stop the CITY from repeated and ongoing violations of the CWA. These violations are detailed
25 in the Notice of Violations and Intent to File Suit dated February 23, 2012 ("CWA Notice")
26 made part of this pleading and attached hereto as EXHIBIT A.

27 2. RIVER WATCH alleges the CITY is routinely violating the CWA, the Regional
28 Water Quality Control Board's Water Quality Control Plan ("Basin Plan"), and Environmental

1 Protection Agency ("EPA") regulations codified in the Code of Federal Regulations in the
2 course of the CITY's operation of its sewage collection system, as described in the CWA Notice.

3 3. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard
4 to public participation in the enforcement of the CWA. 33 U.S.C. § 1251(e) provides, in
5 pertinent part:

6 *Public participation in the development, revision, and enforcement of any*
7 *regulation, standard, effluent limitation, plan or program established by the*
8 *Administrator or any State under this chapter shall be provided for,*
encouraged, and assisted by the Administrator and the States.

9 4. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future
10 violations, the imposition of civil penalties, and other relief for the CITY's violations of the
11 CWA's prohibition against discharging a pollutant from a point source to the waters of the
12 United States without a National Pollutant Discharge Elimination System ("NPDES") permit,
13 CWA §301(a), 33 U.S.C. §1311(a), and 33 U.S.C. §1365(f).

14 II. PARTIES

15 5. Plaintiff, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit,
16 public benefit corporation duly organized under the laws of the State of California, with
17 headquarters and main office located in the City of Sebastopol, California. RIVER WATCH is
18 dedicated to protect, enhance, and help restore the surface and subsurface waters of Northern
19 California. Its members reside in Northern California including the City of Yreka where the
20 subject sanitary sewer collection system under the CITY's operation/and or control is located.

21 6. Members of RIVER WATCH live nearby to waters affected by the CITY's illegal
22 discharges as alleged in this Complaint. Said members have interests in the watersheds
23 identified in the CWA Notice and this Complaint, which interests are or may be adversely
24 affected by the CITY's alleged violations. Said members use the effected watershed areas for
25 domestic water, recreation, sports, fishing, swimming, hiking, photography, nature walks, and
26 the like. Furthermore, the relief sought will redress the injury in fact, likelihood of future injury,
27 and interference with the interests of said members.

1 7. RIVER WATCH is informed and believes and on such information and belief
2 alleges that Defendant, CITY OF YREKA, is now and was at all times relevant to these
3 proceedings, a public entity, with offices located at 701 Fourth Street, Yreka, California.

4 **III. JURISDICTIONAL ALLEGATIONS**

5 8. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of
6 the CWA, 33 U.S.C. § 1365(a)(1), which states in part,

7 “any citizen may commence a civil action on his own behalf against any
8 person . . . who is alleged to be in violation of (A) an effluent standard or
9 limitation . . . or (B) an order issued by the Administrator or a State with
10 respect to such a standard or limitation.” For purposes of Section 505, “the
11 term ‘citizen’ means a person or persons having an interest which is or may be
12 adversely affected.”

13 9. Members and supporters of RIVER WATCH reside in the vicinity of, derive
14 livelihoods from, own property near, and/or recreate on, in, or near and/or otherwise enjoy and
15 benefit from the waterways and associated natural resources into which the CITY discharges
16 pollutants as alleged in this Complaint, or by which the CITY’s operations adversely affect their
17 interests, in violation of CWA § 301(a) [33 U.S.C. § 1311(a)], CWA § 505(a)(1) [33 U.S.C. §
18 1365(a)(1)], and CWA § 402 [33 U.S.C. § 1342]. The health, economic, recreational, aesthetic,
19 and environmental interests of RIVER WATCH and its members may be, have been, are being,
20 and will continue to be adversely affected by the CITY’s unlawful violations alleged herein.
21 RIVER WATCH and its members contend there exists an injury in fact to them, causation of that
22 injury by the CITY’s complained of conduct, and a likelihood that relief would redress that
23 injury.

24 10. Pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), notice
25 of the CWA violations alleged in this Complaint were given more than sixty (60) days prior to
26 commencement of this lawsuit, to: (a) Defendant CITY OF YREKA, (b) the United States EPA,
27 Federal and Regional, and (c) the State of California Water Resources Control Board.

28 11. Pursuant to Section 505(c)(3) of the CWA, 33 U.S.C. § 1365(c)(3), a copy of this
Complaint has been served on the United States Attorney General and the Administrator of the
Federal EPA.

12. Pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), venue lies in this District as the sewage collection and treatment facilities under the CITY's operation and/or control, and the watersheds and lands where illegal discharges occurred, which are the source of the violations complained of in this action, are located within this District.

IV. GENERAL ALLEGATIONS

RIVER WATCH incorporates by reference all the foregoing as though the same were separately set forth herein.

13. The CITY's service area is located within the City of Yreka. The CITY provides service to approximately 10 square miles. The CITY's wastewater collection system collects and transports wastewater to a treatment plant through a system of sanitary sewer pipelines consisting of approximately 50 miles of sewer line.

14. Numerous sewer system overflows (“SSOs”) from the CITY’s collection system are documented in Regional Water Quality Control Board (“RWQCB”) records and in the California Integrated Water Quality System (“CIWQS”) reporting system, a number of which SSOs reached storm drains which discharge into waters of the United States, in violation of the CWA’s prohibition with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, CWA § 301(a) [33 U.S.C. § 1311(a)] and CWA § 505(f) [33 U.S.C. §1365(f)].

15. As recorded in CIWQS Public SSO reports, the CITY reported 38 SSOs between November 2007 and October 2012, with a combined volume of 44,845 gallons. The CITY claims 40,098 gallons reached surface waters. On January 12, 2011 the CITY reported a volume of 36,000 gallons of untreated waste water from a city-owned gravity sewer main at East Lennox Street, almost all 36,000 gallons of which reached Yreka Creek.

16. SSOs from the CITY's wastewater collection system caused by blockages and inflow and infiltration ("I/I") of rainwater and groundwater result in the discharge of raw sewage into gutters and storm drains which discharge to nearby surface waters such as Yreka Creek, Klamath River, and Shasta River, all waters of the United States, in violation of the CWA's prohibition with regard to discharging a pollutant from a point source to a waters of the United

1 States without a NPDES permit, CWA § 301(a) [33 U.S.C. § 1311(a)] and CWA § 505(f) [33
2 U.S.C. § 1365(f)].

3 17. RIVER WATCH alleges collection system overflows caused by underground
4 leakage (“exfiltration”) from the CITY’s structurally defective sewer pipelines resulted in the
5 discharge of raw sewage to nearby surface waters via hydrologically connected groundwater, in
6 violation of the CWA’s prohibition with regard to discharging a pollutant from a point source
7 to a waters of the United States without a NPDES permit, CWA § 301(a) [33 U.S.C. § 1311(a)]
8 and CWA § 505(f) [33 U.S.C. § 1365(f)].

9 18. RIVER WATCH alleges that the CITY’s sewer treatment plant’s capacity of 1.3
10 million gallons per day is surpassed on the highest flow days by a factor of 3 or 4. This
11 treatment plant is located adjacent to Yreka Creek. The excess flow on these days reaches the
12 nearby surface water in violation of the CWA’s prohibition with regard to discharging a
13 pollutant from a point source to a waters of the United States without a NPDES permit, CWA
14 § 301(a) [33 U.S.C. § 1311(a)] and CWA § 505(f) [33 U.S.C. § 1365(f)].

15 19. RIVER WATCH alleges the CITY has no NPDES permit regulating the discharges
16 from its sewage collection facilities. All discharges to navigable waters from point sources
17 without an NPDES permit are a violation of the CWA.

18 20. The CITY’s operation of its sewage collection system has caused contamination
19 of groundwater, surface waters (including Yreka Creek) and residential areas with human
20 pathogens, metals, endocrine disruptors, and biostimulants in violation of the CWA’s prohibition
21 with regard to discharging a pollutant from a point source to a waters of the United States
22 without a NPDES permit, CWA § 301(a) [33 U.S.C. § 1311(a)] and CWA § 505(f) [33 U.S.C.
23 § 1365(f)].

24 21. The RWQCB has determined that the watershed areas and affected waterways
25 identified in the CWA Notice and this Complaint are beneficially used for municipal,
26 agricultural and industrial water supply; groundwater recharge; freshwater replenishment;
27 contact water recreation; non-contact water recreation; warm-freshwater, cold-freshwater and
28

1 wildlife habitat; migration of aquatic organisms; spawning, reproduction, and/or early
2 development; commercial and sport fishing; and, aquaculture.

3 **V. STATUTORY AND REGULATORY BACKGROUND**

4 22. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of
5 pollutants from a "point source" into the navigable waters of the United States, unless such
6 discharge is in compliance with applicable effluent limitations as set by the EPA and the
7 applicable State agency. These limits are to be incorporated into a NPDES permit for that point
8 source specifically. The effluent discharge standards or limitations specified in the NPDES
9 permit define the scope of the authorized exception to 33 U.S.C. § 1311(a), such that violation
10 of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the
11 CWA. Additional sets of regulations are set forth in the RWQCB's Basin Plan, California
12 Toxics Plan, the Code of Federal Regulations and other regulations promulgated by the EPA and
13 the State Water Resources Control Board. Section 301(a) of the CWA prohibits the discharge
14 of pollutants or activities not authorized by, or in violation of an effluent standard or limitation
15 or an order issued by the EPA or the State with respect to such a standard or limitation including
16 a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The wastewater
17 collection system piping and sewer lines as well as the wastewater treatment plant owned and
18 operated by the CITY are point sources under the CWA.

19 23. The affected waterways detailed in this Complaint and the CWA Notice are
20 navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33
21 U.S.C. § 1362(7).

22 24. The Administrator of the EPA has authorized the RWQCB to issue NPDES
23 permits, subject to specified conditions and requirements, pursuant to Section 402 of the CWA,
24 33 U.S.C. § 1342.

25 25. RIVER WATCH alleges the CITY has no NPDES permit for discharging
26 pollutants to waters of the United States. All unauthorized point source discharges to waters of
27 the United States are illegal. The CITY's sewer pipelines and wastewater treatment plant are
28

1 point sources. Discharges from these point sources to a water of the United States, without a
2 NPDES permit, are illegal.

3 26. The Clean Water Act and Discharge Prohibition No. 15 from Table 4-1 of the
4 Basin Plan prohibit the discharge of wastewater to surface waters except as authorized under a
5 NPDES permit. Privately owned treatment works, such as the CITY's wastewater treatment
6 plant, must achieve secondary treatment, at a minimum, and any more stringent limitations
7 necessary to achieve water quality standards. [33 U.S.C. § 1311 (b)(1)(B and C)]. Therefore, a
8 SSO that results in the discharge of raw sewage, or sewage not meeting secondary treatment
9 requirements is prohibited under the CWA and the Basin Plan.

10 VI. VIOLATIONS

11 27. RIVER WATCH alleges the CITY's point source discharges not regulated by a
12 NPDES permit violate the CWA's prohibition against discharge of pollutants from a point
13 source without a NPDES permit. The violations are established in the RWQCB's files for the
14 CITY's sewer collection system. The enumerated violations are detailed in the CWA Notice
15 designating the section of the CWA violated by the described activity.

16 28. The location of the discharges are the discharge points as described in the CWA
17 Notice and in this Complaint.

18 VII. CLAIM FOR RELIEF

19 **Violation of 33 U.S.C. §1 251 *et seq.*, 33 U.S.C. §§ 1342 (a) and (b) and 33 U.S.C. § 1311**

20 **Discharge of Pollutants from Point Sources to United States Waters**

21 RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs
22 1 through 28 above including the CWA Notice as though fully set forth herein. RIVER WATCH
23 is informed and believes and based upon such information and belief alleges as follows:

24 29. The CITY has violated and continues to violate the CWA as evidenced by the
25 discharges of pollutants from a point source without a NPDES permit, in violation of Section
26 301 of the CWA, 33 U.S.C. § 1311.

27 30. The violations of the CITY as alleged in this Complaint are ongoing and will
28 continue after the filing of this Complaint. RIVER WATCH alleges herein all violations which

1 may have occurred or will occur prior to trial, but for which data may not have been available
2 or submitted or apparent from the face of the reports or data submitted by the CITY to the
3 RWQCB or to RIVER WATCH prior to the filing of this Complaint. RIVER WATCH will
4 amend this Complaint if necessary to address the CITY's violation of the CWA which may occur
5 after the filing of this Complaint. Each discharge of a pollutant without a NPDES permit is a
6 separate violation of the CWA.

7 31. RIVER WATCH alleges that without the imposition of appropriate civil penalties
8 and the issuance of appropriate equitable relief, the CITY will continue to violate the CWA with
9 respect to the enumerated discharges and releases as alleged herein. Further, that the relief
10 requested in this Complaint will redress the injury to RIVER WATCH and its members, prevent
11 future injury, and protect those members' interests which are or may be adversely affected by
12 the CITY's violations of the CWA as alleged herein.

13 **VIII. PRAYER FOR RELIEF**

14 RIVER WATCH prays this Court grant the following relief:

15 32. Declare the CITY to have violated and to be in violation of the CWA;

16 33. Issue an injunction ordering the CITY to immediately operate its sewage collection
17 system and sewage treatment plant in compliance with the CWA;

18 34. Order the CITY to adopt investigative and maintenance procedures to minimize
19 the likelihood of ongoing unpermitted discharges of untreated sewage from its sewage collection
20 system;

21 35. Order the CITY to adopt a mandatory private sewer lateral inspection and repair
22 program;

23 36. Order the CITY to reduce collection system I/I through the adoption of an
24 aggressive collection system management, operation, and maintenance ("CMOM") program;

25 37. Order the CITY to adopt SSO reporting practices which accurately estimate the
26 volume and fate of untreated sewage discharged from the CITY's sewage collection system;

27 38. Order the CITY to perform human marker sampling on creeks, rivers, wetlands,
28 and areas adjacent to sewer lines to test for sewage contamination from underground exfiltration;

- 1 39. Order the CITY to place monitoring wells between its percolation ponds and Yreka
2 Creek;
3 40. Order the CITY to pay civil penalties of per violation/per day for its violations of
4 the CWA;
5 41. Order the CITY to pay the reasonable attorneys' fees and costs of RIVER WATCH
6 (including expert witness fees), as provided by 33 U.S.C. § 1365(d), and applicable California
7 law; and,
8 42. For such other and further relief as the court deems proper.
9

10 DATED: November 9, 2012



JERRY BERNHAUT
Attorney for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



February 23, 2012

***Via Certified Mail -
Return Receipt Requested***

Charles Cossey
Wastewater Treatment Plant Manager
City of Yreka
856 North Main Street
Yreka, CA 96097

Steven W. Baker
City Manager
City of Yreka
701 Fourth Street
Yreka, CA 96097

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Head of Operations:

NOTICE

The Clean Water Act ("CWA" or the "Act") § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), [33 U.S.C. § 1365(a),] a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

This letter serves as notice on behalf of Northern California River Watch ("River Watch") that River Watch hereby places the City of Yreka, ("the Discharger") on notice that following the expiration of 60 days from the date of this Notice, River Watch intends to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA, in particular, but not limited to CWA § 505(a)(1), [33 U.S.C. § 1365(a)(1),] the Code of Federal Regulations, and the Regional Water Quality Control Board's "Basin Plan, as exemplified by the incidents of non-compliance with the CWA by the Discharger, identified and outlined below.

INTRODUCTION

The CWA prohibits any discharge of pollutants from a point source to waters of the United States except as authorized under a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA § 402, which allows the discharge of designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates, satisfies certain criteria. See 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (SWRCB) and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, North Coast Region (RWQCB).

The Discharger owns and operates wastewater collection, treatment, and disposal facilities ("WWTF") for municipal wastewater from the City of Yreka. The Discharger discharges treated effluent to a 31-acre, subsurface, drip disposal field (Disposal Facility) located 800 feet north of the WWTF in NW¼ Section 14, T45N, R7W. The Discharger uses percolation ponds for excess flows during high inflow periods. The Discharger's wastewater collection system consists of approximately 50 miles of gravity pipeline, pressure mains, 4 pump stations, interceptor lines, collection lines, cleanouts, and manholes.

On May 15, 2003, the RWQCB issued Waste Discharge Requirements (WDRs) Order No. R1-2003-0047, governing discharges associated with the Discharger's WWTF, sewer collection system, and Disposal Facility.

On May 2, 2006, the SWRCB adopted Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Wastewater Collection Agencies (General WDRs). On October 26, 2006, the Discharger enrolled for coverage under the General WDRs.

Four percolation ponds located adjacent to the WWTF, are used as the primary, pre-upgrade effluent disposal facilities. The WWTF, Disposal Facility and percolation ponds are located adjacent to Yreka Creek.

Post-upgrade design specifications indicate a dry weather (June through October) flow treatment capacity of 1.3 million gallons per day (mgd). The Disposal Facility was designed to accommodate 1.3 mgd. The percolation ponds provide additional disposal capacity. Although the average influent wastewater flows do not exceed the design capacity, single-day highest flows often do by a factor of 3 or 4.

The proximity of the WWTF and Disposal Field to Yreka Creek will continue to be a concern regarding the potential for the contribution of pollutants including metals, endocrine disruptors and biostimulants (nutrients) to the Creek. The discharge of pollutants from the percolation ponds to Yreka Creek constitute a violation of the CWA.

The Basin Plan for the North Coast Region includes water quality objectives, implementation plans for point source and non-point source discharge prohibitions and statewide plans and policies. The Basin Plan prohibits discharges to Klamath River and its tributaries except as provided in the Action Plan for Storm Water Discharges.

Beneficial uses for Yreka Creek, Shasta River, and Klamath River include: municipal, agricultural and industrial water supply; groundwater recharge; freshwater replenishment; contact water recreation; non-contact water recreation; warm-freshwater, cold-freshwater and wildlife habitat; migration of aquatic organisms; spawning, reproduction, and/or early development; commercial and sport fishing; and, aquaculture.

The Discharger has a history of sewer system overflows (SSOs) from its aging sewer lines. As recorded in the SWRCB, California Integrated Water Quality System (CIWQS) Interactive SSO Reports, the Discharger's collection system experienced numerous SSOs between October 26, 2006 and February 15, 2012.

Structural defects in the Discharger's collection system, which allow inflow and infiltration (I/I) of rainwater and groundwater into the sewer lines is a contributing factor in SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters – all waters of the United States. In addition to surface overflows which discharge overland into surface waters, underground leakages (exfiltration) caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines, have verified the contamination of the adjacent waters with untreated sewage. River Watch alleges that such discharges are continuous wherever aging, damaged, structurally defective sewer lines in the Discharger's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The Discharger's chronic collection system failures pose a substantial threat to public health.

Under the Basin Plan any point source discharge of sewage effluent to waters of the United States must comply with technology-based, tertiary treatment standards at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA. In addition, the Basin Plan adopted by the RWQCB contains discharge prohibitions which apply to the discharge of untreated or partially treated wastewater.

The Discharges as described herein constitute a nuisance, and are either: injurious to health; indecent or offensive to the senses; or, an obstruction to the free use of property; and, occur during, or as a result of, the transportation, disposal or treatment of wastes.

The Discharger's collection system operations are not regulated under a NPDES Permit, but are currently regulated under the Statewide General WDRs adopted on May 2, 2006.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

River Watch has identified discharges of raw sewage from the Discharger's wastewater treatment plant collection system to surface waters in violation of the prohibition of the CWA with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives above describing the discharges of raw sewage to surface waters as the activities leading to violations, and describing with particularity specific incidents referenced in the SWRCB's CIWQS SSO Public Reports and other public documents in the Discharger's possession or otherwise available to the Discharger, and incorporates by reference records cited above from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The entity responsible for the alleged violations is the City of Yreka, identified throughout this Notice as the "Discharger".

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in records created and/or maintained by or for the Discharger which relate to the Discharger's wastewater treatment plant and associated sewage collection system located in the City of Yreka, as further described in this Notice.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined records of the RWQCB as to the Discharger and the WWTF for the period from October 26, 2006 to February 15, 2012, therefore, the range of dates covered by this Notice is October 26, 2006 to February 15, 2012. River Watch will update this Notice from time to time to include all violations which occur after the range of dates currently covered by this Notice.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is Northern California River Watch, P.O. Box 817, Sebastopol, CA 95472, E-mail US@ncriverwatch.org, referred to throughout this Notice as "River Watch". River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

VIOLATIONS

River Watch contends that from October 26, 2006 to February 15, 2012, the Discharger has violated the CWA, the Basin Plan and the Code of Federal Regulations for discharging pollutants to waters of the United States from its sewage collection system without a NPDES permit. The below-listed violations are reported by RWQCB staff, and evidenced by the SWRCB's CIWQS SSO Reporting Program Database Records. Furthermore, River Watch contends these violations are continuing.

<u>Violations</u>	<u>Description</u>
-------------------	--------------------

1800	Collection system overflows caused by underground exfiltration. This is an event in which untreated sewage is discharged from the collection system prior to reaching the WWTF. Underground discharges are alleged to have been continuous throughout the period from October 26, 2006 to February 15, 2012. Evidence to support the allegation of underground discharge of raw sewage exists in the Discharger's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the WWTF reported in the Discharger's records, video inspection of the collection system, and testing of waterways adjacent to sewer lines, creeks and wetlands for human markers, nutrients, pathogens and other constituents indicating sewage contamination.
-------------	--

1800	Percolation Pond discharges caused by underground exfiltration. This is an event in which untreated or partially treated sewage is discharged from the percolation ponds to Yreka Creek. Underground discharges are alleged to have been continuous throughout the period from October 26, 2006 to February 15, 2012. Evidence to support the allegation of underground discharge of sewage exists in the Discharger's own mass balance data and testing of waterways adjacent to the ponds for nutrients, pathogens and other constituents indicating sewage contamination.
-------------	---

- 45 **SSOs.** As evidenced in the SWRCB's CIWQS Interactive SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents.

REMEDIAL MEASURES REQUESTED

River Watch believes the following remedial measures are necessary to bring the Discharger into compliance with the CWA and the Basin Plan, and reflect the biological impacts of the Discharger's ongoing non-compliance with the CWA:

1. A reduction of collection system I/I through an aggressive collection system management, operation and maintenance ("CMOM") program, with clear time lines for prioritized repairs. The CMOM program shall include:
 - a. The amendment of the Risk Assessment Plan in the Discharger's Sewage System Management Plan, to specify that defective sewer lines located within 150 feet of surface waters, including drainage channels and creeks, will be given a higher priority for repair and/or replacement than other sewer lines with comparable defects located more than 150 feet from surface waters. Said prioritization will be consistent with information provided by the Discharger's Flow Monitoring and Inflow/Infiltration Study completed in June 2009. The Discharger's CCTV Program shall prioritize the televising of sewer lines identified by the Flow Monitoring and Inflow/Infiltration Study completed in 2009 as necessary to assess the exact location of I/I sources.
 - b. The provision of funding in the Discharger's Capitol Improvements Plan to CCTV all gravity sewer lines every 10 years, except for lines CCTV'd within the prior 10 years, and lines constructed, replaced or repaired within the prior 20 years.
2. A mandatory private sewer lateral inspection and repair program triggered by any of the following events:
 - a. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 20 years prior to the transfer.
 - b. The occurrence of 2 or more SSOs caused by the private sewer lateral within 2 years.
 - c. A change of the use of the structure served (1) from residential to non-residential uses, (2) to a non-residential use which will result in a higher flow than the current non-residential use, and (3) non-residential uses where the structure served has been vacant/unoccupied for more than 3 years.
 - d. Upon replacement or repair of any part of the sewer lateral.

- e. Upon issuance of a building permit with a valuation of \$25,000.00 or more.
 - f. Upon significant repair or replacement of the main sewer line to which the lateral is attached.
- 3. Compliance with monitoring and reporting requirements, especially regarding all overflows which reach storm drains or discharge directly to state waters, including a more detailed account of SSOs and remedial actions, with sufficient information to verify and document SSOs start times, durations, volumes, volumes recovered, volumes reaching surface waters and remedial actions including whether any chemical agents were used.
 - 4. Creation of web site capacity to track information regarding SSOs. In the alternative, a link from the Discharger's web site to the SWRCB's CIWQS SSO Public Reports. Provision of notification to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.
 - 5. Performance of human marker sampling on creeks, rivers, wetlands and areas adjacent to sewer lines, to test for sewage contamination from underground exfiltration.
 - 6. Placement of monitoring wells between the percolation ponds and Yreka Creek. Reconstruction of percolation ponds to eliminate discharge of pollutants through hydrologically connected ground water.

CONTACT INFORMATION

River Watch has retained legal counsel with respect to the issues raised and violations of the CWA as alleged in this Notice. All communications should be addressed to:

Jack Silver, Esquire
Law Offices of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Fax. 707-528-8675

CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected watershed communities. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. The members' health, use and enjoyment of these natural resources is specifically impaired by the Discharger's alleged violations of the CWA as set forth in herein.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the Discharger for the violations alleged in this Notice.

During the 60-day notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If the Discharger wishes to pursue such discussions in the absence of litigation, it is encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues raised in this Notice before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions have not commenced by the time the 60-day notice period ends

Very truly yours,


Jack Silver

JS:lh

cc: Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

Regional Administrator
US. Environmental Protection Agency Region 9
75 Hawthorne St.
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-100

City Attorney
City of Yreka
701 Fourth Street
Yreka, CA 96097

Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469

Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

F



U.S. POSTAGE
\$150
FCM LG ENV
95404
Date of sale
11/19/12
08 2S00
08259923 APC
FC007 1400 105-436

USPS® FIRST-CLASS MAIL®

0 lb. 3.90 oz.

SHIP
TO:

WASHINGTON DC 20044-7415

ZIP

(420) 20044-7415